Ninety-Eighth Legislature - First Session - 2003
Committee Statement
LB 690

Hearing Date: February 11, 2003
Committee On: Urban Affairs

Introducer(s): (Redfield, Mines, Quandahl)
Title: Adopt the State Natural Gas Regulation Act

Roll Call Vote – Final Committee Action:

	Advanced to General File
	Advanced to General File with Amendments
X	Indefinitely Postponed

Vote Results:

7	Yes	Senators Combs Connealy, Friend, Hartnett, Janssen, Landis and Schimek
	No	
	Present, not voting	
	Absent	

Proponents:	**Representing:**
Senator Pam Redfield	Introducer
Steve Pella	Aquila, Inc.
Les Meyer	Kinder Morgan, Inc.
Alan Dietrich	NorthWestern Energy
Mark Fahleson	High Plains Energy
Richard Haubensak	Cornerstone Energy

Opponents:	**Representing:**
Daniel Crouchley	MUD
Marvin Schultes	Hastings Utilities, City of Hastings
Leroy Frana	City of Nebraska City
Derril Marshall	City of Fremont
Michael Nolan	City of Norfolk
Lynn Rex	League of NE Municipalities
Chris Dibbern	NMPP Energy

Neutral:	**Representing:**
Joel Pedersen	City of Lincoln
John Erickson	Governor's Policy Research Office
Lowell Johnson	Nebraska PSC

Summary of purpose and/or changes:

This bill proposes to enact the State Natural Gas Regulation Act to provide for regulation of natural gas by the public service commission and to repeal the current Municipal Natural Gas Regulation Act. It would be applicable to all public (municipally owned) and investor owned natural gas utilities.

The legislation proposes to transfer existing regulation of investor owned natural gas utilities from the cities in which they operate to the Public Service Commission and provide for enhanced regulatory authority over municipally owned and operated natural gas utilities and marketers by the Commission as well.

It defines (in section 11) “company” to include municipal corporations and metropolitan utilities districts and (in sections 20 and 22) defines natural gas utilities and marketers to include “companies.” In sections 30 and 32, general jurisdiction over all natural gas utilities and marketers is granted to the public service commission. There is no exemption for municipal corporations and metropolitan utilities district from the regulatory provisions of the act.

The jurisdiction of the commission would extend to “general regulation” of utilities pursuant to provisions of the act (section 20) and to matters vested in the commission (section 22). That jurisdiction would generally extend only to rate regulation and the determination of exclusive service territories: it would not extend (except in the most restrictive fashion (in section 49)) to the terms and conditions of natural gas service.

Regulation under the act would encompass only natural gas service to residential and small commercial customers (those using less than one hundred thousand cubic feet of natural gas per day on the average). Regulation does not extend to agricultural customers that use natural gas for agricultural production.

The legislation expressly validates existing rates and tariffs as well as rate areas and service territories as they exist on the effective date of the act and prohibits retroactive enforcement of the provisions of the new Act.

One of the most significant aspects of the legislation is the explicit development of exclusive service territories (Sec. 38 and Secs. 54 to 57). It is stated that it is the legislative intent to establish exclusive service territories for natural gas utilities. Areas served by natural gas utilities on the effective date of the act are validated as the exclusive areas for service by those utilities. Thereafter, upon hearing, the commission may modify the boundaries, but can’t transfer service to customers from one utility to another unless the existing service provider is “incapable of providing safe and adequate service to such customers.” In section 55, a formula is provided for determining how compensation should be made for the transfer of service territory from one utility to another. Contracts for the provision for service are to be honored by the commission. Except as expressly provided in the act (under customer choice programs) one utility may not offer to serve or actually serve customers in another utility’s exclusive service area. The prohibition is enforceable by order of the commission.

A utility is authorized to extend service to new and unserved customer within and without primary, first, and second class cities and villages (for up to three miles) when it serves those cities under a franchise agreement. If a utility does not meet these conditions (as in the case of the Metropolitan Utilities District), it can request and obtain a certificate of public convenience and necessity to serve those customers from the commission (section 56).

The bulk of the legislation deals with the various elements which are involved in rate-setting, including the delineation of items which may properly be considered costs which should be included in the new rates.

Utilities are granted the authority to charge interim rates (subject to refund) pending the completion of regulatory action.

Judicial enforcement of commission orders commences in Lancaster District Court and follows the normal course of civil litigation.

The operations of the commission under the act are financed by assessments to the utilities subject to commission jurisdiction based upon the amount of gas sold to residential and small commercial customers during the past calendar year (section 31).

The legislation explicitly prohibits MUD from serving customers in another utility's exclusive service territory (Sec. 85).

The act contains provisions which were part of amendments to LB 806 adopted by the Urban Affairs Committee in 2002. In sections 63 and 64, provisions providing for local option rate regulation by negotiations with the local natural gas utility are set out. If a utility sought to initiate a rate adjustment, the cities in the current rate area served by the utility would have the option of informing the commission of their interest in negotiating the rate increase. If cities representing more than fifty percent of the customers in the rate area requested negotiations, commission activity on the filing would be suspended and the parties would have sixty days (subject to extension) to review and negotiate new rates. Cities would have available funds from a new revolving loan fund (successor to the existing loan fund) to hire professional assistance. If the negotiations resulted in agreement on new rates between the cities and the utility, the commission would be obliged to accept the new rates as being valid on their face and in the public interest and would approve them.

Explanation of amendments, if any:

Senator D. Paul Hartnett, Chairperson